



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Fonda Group, Inc.--Request for
Reconsideration
File: B-225823.3
Date: May 29, 1987

DIGEST

Neither the desire to compete on the part of a firm that submitted a late proposal, nor the fact that another company has protested its failure to receive a copy of the solicitation, warrants consideration of the late proposal since it properly was rejected under the applicable rules.

DECISION

The Fonda Group, Inc., requests that we reconsider our decision in The Fonda Group, Inc., B-225823.2, Apr. 28, 1987, 87-1 C.P.D. ¶ ___, in which we dismissed the firm's protest of the General Services Administration's (GSA) rejection of its offer as late under solicitation No. 7PRT-53034/N4/7FX for paper plates.

We affirm the dismissal.

Fonda alleged in its protest that it first learned of the solicitation on January 13, 1987, through a customer who then furnished Fonda an incomplete copy of the solicitation. Fonda stated that it prepared an offer using that copy, and sent the offer from New Jersey by regular mail on January 15 or 16, which Fonda expected left enough time to reach GSA's Federal Supply Service offices in Fort Worth, Texas, by the January 20 closing date for receipt of proposals. Fonda contended that GSA relied on technicalities to exclude the offer, which was received 2 days after the closing date and rejected as late, because of alleged deficiencies, which Fonda disputes, in Fonda's performance under another contract.

We dismissed the protest because Fonda's offer was sent by regular mail and there was no government mishandling involved. Since the standard solicitation clause governing late proposals permits consideration of a late proposal only if sent by registered or certified mail at least 5 days before the closing date for receipt of proposals, or where

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the delay was caused solely by government mishandling after receipt of the proposal at the government installation, Federal Acquisition Regulation, 48 C.F.R. § 52-215.10 (1985), there was no basis to object to GSA's rejection of Fonda's offer.

Fonda, in its reconsideration request, suggests that in dismissing its protest we were not aware that another company, Packaging Corporation of America (PCA), had protested to our Office the failure to receive a copy of the solicitation. Fonda argues the fact that two potential offerors did not receive the solicitation, thereby being denied the desired opportunity to compete, and that only one other company submitted a timely offer, raises a significant issue about the conduct of the procurement.

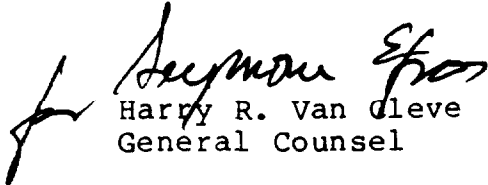
PCA's protest, which is pending in our Office, involves the firm's failure to receive a copy of the solicitation at all. Fonda, in contrast, did receive a copy, albeit an allegedly incomplete one and not from GSA. Fonda, however, did not protest the failure to be furnished a full solicitation from GSA until after its offer was rejected, instead simply preparing an offer and mailing it; to be timely and therefore considered on the merits, such a protest would have had to be filed before the proposal due date. 4 C.F.R. § 21.2(a)(1) (1986). Thus, unlike in PCA's case, where PCA asserts it only learned of the date offers were due after that date had passed, Fonda was able to prepare an offer and mail it 4 to 5 days before the required date. The paramount reason for Fonda's failure to enter the competition on time thus seems to have been the company's decision on how to send its offer, i.e., Fonda's failure to fulfill its responsibility to insure timely delivery of its proposal. See Siemens Hearing Instruments, Inc., B-225548, Dec. 30, 1986, 86-2 C.P.D. ¶ 721.

PCA's protest concerns whether it was unfairly excluded from the competition. The reason for Fonda's exclusion is different from the reason for PCA's and, as stated in our prior decision, Fonda's situation does not fall under any exception to the rules that preclude considering late proposals. That is not changed by the fact of PCA's protest filing or by Fonda's desire to be included despite having submitted an unacceptably late offer.

Fonda also argues that we should consider its protest of the company's failure to receive a solicitation from GSA under the exception in our Bid Protest Regulations for untimely protests that raise significant issues. See 4 C.F.R. § 21.2(c). An issue is significant, however, if

it is of widespread interest to the procurement community and involves a case of first impression. A.C. Clayton & Associates, B-225886, Dec. 19, 1986, C.P.D. ¶ 694. Since we previously have considered protests involving the failure to receive a solicitation (see, e.g., NCR Data Systems, B-222912, July 18, 1986, 65 Comp. Gen. ¶ _____, 86-2 C.P.D. ¶ 84), Fonda's protest does not meet the significant-issue standard.

Our decision is affirmed.


Harry R. Van Cleve
General Counsel